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From:

Sent: Wednesday, November 16, 2011 11:03:18 AM

To:

Cc:

Subject: RE: Fringe benefit valuation in the fuel compliance program

Greetings

I've looked at your questions, and I offer the following responses.

Valuation method- May we use the lease-value method for the trucks placed in service prior to 2011?

The answer is, yes, you may use the annual lease value method for trucks placed in service prior to 2011. I assume you are asking whether you can use the annual lease value method on a going forward basis instead of going back to prior open years to make corrections, is that right? The regs at section 1.61-21(d)(7)(i) provide that an employer may adopt the automobile lease valuation rule for an automobile only if the rule is adopted to take effect by the later of January 1, 1989, or the first day on which the automobile is made available to an employee of the employer for personal use ***(or if the commuting valuation rule is used when the automobile is first made available to an employee of the employer for personal use, the first day on which the commuting valuation rule is not used.)*** Thus, in situations like yours where the commuting valuation rule was used when the vehicle was first placed into service, the regulations allow employers to switch to the annual lease value method as of the first day on which the commuting valuation rule is not used.

Available for use- Is availability defined as access to the vehicle or permitted use of the vehicle? As you know, the regulation covers a wide range of situations including employers who allow personal use of the vehicle beyond just commuting use. Our employees park the vehicles at their homes. They have access to those vehicles 100% of the time. They are only permitted to use the vehicles for official purposes.

Availability for use means access to the vehicle. the amount of the annual lease value that is actually included in the employee's income is that portion relating to the availability of the automobile for commuting and other personal use. Mileage records are used to determine what portion of the total automobile use is for personal purposes. For example, if an employee uses an automobile for a total of 10,000 miles during the year and 2,000 of those miles are for personal purposes, 20 percent of the annual lease value of the automobile must be included in the employee's gross income. See Reg. sec. 1.132-5(b).

Hope this is helpful. Please let me know if I may be of further assistance.